REMARKS

In response to the Office Action dated September 1, 2009, Applicant hereby submits the following remarks. Applicant has not amended the claims, but has withdrawn claims 24–31 from further consideration. Claims 7–10, 12–13, and 22–31 remain pending.

Election/Restriction

The Office Action asserted that claims 24–31 are directed to independent or distinct subject matter from claims 7–10, 12–13, and 22–23 because claims 24–31 include subject matter such as "checking-in a modified version of the first node" and "receiving an update to the enterprise planning model."[1] Applicant respectfully traverses the restriction requirement, and provisionally elects claims 7–10, 12–13, and 22–23.

In order to issue a proper restriction, the pending claims of an application must be (1) independent or distinct as claimed and (2) there must be a serious burden on the Examiner if restriction is not required.[2] Applicant does not need to address the question of whether the subject matter of claims 24–31 is independent or distinct as, it is respectfully submitted, an examination of claims 24–31 would not be a serious burden on the Examiner.

As to checking-in a modified version of a first node, Applicant respectfully directs the Examiner's attention to claim 10, which requires updating data of the checked-out one of the nodes with the contribution data that was received prior to the check-out of the individual one of the nodes in accordance with the updated model information when the checked-out individual one of the nodes **is subsequently checked-in** during the execution of the enterprise planning session. Thus, the subject matter of checking-in a modified version of a node has already been examined, and claims 24–31 can therefore be examined without imposing a serious burden to the Examiner.

As to receiving an update to the enterprise planning model, Applicant respectfully directs the Examiner's attention to claim 8, which requires **receiving updated model information** for the checked-out individual one of the nodes. Thus, the subject matter of receiving an update to the enterprise planning model has already been examined, and claims 24–31 can therefore be examined without imposing a serious burden to the Examiner.

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[1] Office Action dated September 1, 2009, p. 2.
[2] *See, e.g.,* MPEP 803.

Applicant therefore respectfully requests that claims 24–31 be examined as part of the next official action. However, for the present, Applicant has indicated these claims as "withdrawn" in the above listing of the claims, pursuant to the current restriction requirement. As indicated above, Applicant provisionally elects claims 7–10, 12–13, and 22–23 for examination. Nevertheless, Applicant respectfully submits that this restriction is improper and requests reconsideration, examination, and allowance of claims 24–31.

Claim Rejection Under 35 U.S.C. § 103

The Office Action rejected claims 7–10, 12, 13, and 22–23 under 35 U.S.C. § 103(a) as being unpatentable over Elkin et al. (U.S. Patent Publication No. 2007/0179828) in view of Adaytum Software ("Adaytum") (collectively, "the applied references") and further in view of the Official Notice. Applicant respectfully traverses the rejection. The applied references in view of the Official Notice fail to disclose or suggest the features defined by Applicant's claims, and provide no reason for modification to arrive at the claimed features.

Claim 7, for example, requires executing, by a computing device, an enterprise planning session in accordance with an enterprise planning model, wherein the enterprise planning model defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors. The Office Action characterized the requirement that the enterprise planning model defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors as "nonfunctional label for model and session."[3] The Office Action then characterized claim 1 as "modifying nodes of a model without preventing execution of a session for nodes that are not check [sic] out."[4] Applicant respectfully disagrees with this characterization.

MPEP 2106.01 defines functional descriptive material as "data structures and computer programs which impart functionality when employed as a computer component." The MPEP goes on to further define "data structures" as "a physical or logical relationship among data elements, designed to support specific data manipulation functions." Given these definitions, the enterprise planning model required by claim 7 is a data structure, and the description of the enterprise planning model as defining hierarchically arranged nodes associated with business

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[3] Office Action dated September 1, 2009, p. 5.
[4] *Id.*

logic software modules and enterprise contributors is further functional descriptive material regarding the enterprise planning model. In particular, this functional descriptive material of the claim defines relationships between the nodes of the model, designed to support specific data manipulation functions of the model. Accordingly, the characterization of claim 7 that ignores the requirement that the enterprise planning model defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors is improper.

This language also colors the distinction between the enterprise planning model required by Applicant's claim 7 and the applied references. To date, the Office Actions have relied upon references directed to workflow process models.[5] However, a workflow process model, as defined by Elkin, contains "one or more **processes**, each of which represent a specific real-world business activity" such as "'accepting purchase orders' and 'paying an invoice.'"[6] A workflow process model, therefore, cannot properly be interpreted as an enterprise planning model that defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors, as required by claim 7. Instead, a workflow process model defines business activities, such as accepting purchase orders and paying invoices.

The Office Action also interprets a "join" disclosed by Elkin as a "business logic software module."[7] However, Elkin defines "joins" as operations that "synchronize multiple processes 120 or tasks 130, requiring that a result 106 from each process 120 or task 130 be received before allowing further processing."[8] A join is therefore an operation to combine the output of various processes and then grouping this output into a single "thread." A business logic software module, on the other hand, is a distinct software module executed by a computing device, such as modules 21 of Applicant's FIG. 2, e.g., analysis module 30, contribution module 32, administration (ADMIN) console 36, or extension manager 38.

Accordingly, the applied references of record in view of the Official Notice do not establish that it was known or obvious to execute an enterprise planning session in accordance with an enterprise planning model, as required by claim 7. Therefore, whether or not it was known or obvious to execute a <u>workflow process model</u> while a node of the <u>workflow process model</u> is checked out is irrelevant with respect to the requirements of claim 7. A workflow

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[5] *See, e.g.*, Office Action dated September 1, 2009, pp. 7–8 (citing Elkin, ¶¶ 13, 15, 40–41, 102–106, FIG. 3, and FIGS. 7–9).
[6] Elkin, ¶ 40 (emphasis added).
[7] Office Action dated September 1, 2009, p. 4.
[8] Elkin, ¶ 92.

process model is entirely different than an enterprise planning model, the two models having different structures, different purposes, different contexts, and different uses, per the explicit requirements of claim 7.

Moreover, claim 7 further requires modifying a checked-out individual one of the nodes of the enterprise planning model without preventing execution of the enterprise planning session for the nodes of the enterprise planning model that are not checked-out. Again, whether or not checking out and modifying a node of a workflow process model is disclosed or suggested by the applied references is irrelevant to the requirements of claim 7, because claim 7 specifically requires modifying a checked-out individual one of the nodes of the <u>enterprise planning model</u> without preventing execution of the enterprise planning session for the nodes of the <u>enterprise planning model</u> that are not checked out.

Furthermore, claim 7 makes it apparent to those of ordinary skill in the art that an enterprise planning session is a software process executed by a computing device. In particular, claim 7 requires executing, by a computing device, an enterprise planning session. That is, claim 7 demonstrates that the enterprise planning session in a process executed by a computing device. Applicant's specification reinforces this proper reading of claim 7, e.g., at ¶¶ 8–10. Accordingly, Elkin's disclosure of incorporating a workflow process model that does not disrupt "current business activities" is again irrelevant to the requirements of claim 7.[9] That is, this portion of Elkin fails to disclose or suggest modifying, by a computing device, a checked-out individual one of the nodes of the enterprise planning model without preventing execution of the enterprise planning session for the nodes of the enterprise planning model that are not checked-out, as required by claim 7, contrary to the assertions of the Office Action. Instead, Elkin describes the act of deploying enterprise applications without disrupting "current business operations." The current business operations of Elkin do not include the execution of an enterprise planning session, as required by claim 7, and therefore, Elkin fails to disclose or suggest executing, by a computing device, an enterprise planning session in accordance with an enterprise planning model.

Claim 7 requires automating reconciliation of contribution data across an enterprise that corresponds to the enterprise planning model, even though an individual one of the nodes of the model is checked-out for editing. For example, with respect to the example enterprise planning

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[9] *See, e.g.,* Elkin, ¶ 13 (*cited in* Office Action dated September 1, 2009, p. 8).

model of Applicant's FIG. 5, contribution data of outlets A–H may be automatically reconciled (aggregated) at corresponding regions, even when one of the outlets is checked-out. For example, suppose the node corresponding to outlet B is checked out. The node corresponding to region 2 can nevertheless continue to operate and automatically reconcile data from outlets C and D, despite outlet B remaining checked out. Moreover, data of the node corresponding to outlet B can be modified without preventing execution of the enterprise planning session for the nodes corresponding to, e.g., outlets C and D and region 2, which are assumed to be not checked out in this example, pursuant to the requirements of claim 7.

The applied references in view of the Official Notice fail to disclose or suggest automating, by the computing device, reconciliation of the contribution data across an enterprise that corresponds to the enterprise planning model by automatically aggregating the contribution data as the contribution data is received, wherein the enterprise planning model comprises a financial model, checking-out, by the computing device, an individual one of the nodes of the model for editing during execution of the enterprise planning session in accordance with the enterprise planning model, and modifying, by the computing device, the checked-out individual one of the nodes of the model without preventing execution of the enterprise planning session for the nodes of the enterprise planning model that are not checked-out, as required by claim 7.

Applicant further respectfully submits that the Official Notice is improper and does not establish that it is well known to modify individual nodes of an enterprise planning model without preventing execution of an enterprise planning session for the nodes of the enterprise planning model that are not checked out.[10] As Applicant noted in the Amendment submitted June 11, 2009, for example, Heinl and Halliday both fail to disclose or suggest an enterprise planning model that defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors. Heinl instead describes a workflow management application that supports a business workflow.[11] Heinl is not directed to executing an enterprise planning session in accordance with an enterprise planning model that defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors.

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[10] Additionally, Applicant notes that, despite the statement of MPEP 2144.03, the MPEP is merely a guide for Examiners and does not have the force of law. *See* MPEP Foreword ("The Manual does not have the force of law or the force of the rules in Title 37 of the Code of Federal Regulations."). Accordingly, Applicant remains entitled to a patent unless the Examiner is able to establish a prima facie case of non-patentability under 35 U.S.C. §§ 102 or 103, despite the MPEP's statement that an Official Notice will be deemed admitted if not adequately traversed. Moreover, in at least the Amendment submitted June 11, 2009, Applicant adequately traversed the Official Notice.
[11] Heinl, p. 79, col. 2.

Halliday likewise discloses a workflow and fails to disclose or suggest executing an enterprise planning session in accordance with an enterprise planning model that defines hierarchically arranged nodes associated with business logic software modules and enterprise contributors.[12] The references cited in support of the Official Notice, e.g., Heinl and Halliday, also do not support the conclusion advanced by the Office Action that it is well known to modify individual nodes of an enterprise planning model without preventing execution of an enterprise planning session for the nodes of the enterprise planning model that are not checked out.

Heinl and Halliday each suffer from the same fatal flaw of Elkin when describing modification of models, in particular, that Heinl and Halliday are directed to workflow process models.[13] As noted above, whether or not it is well known in the art to modify nodes of a workflow process model without preventing execution of a workflow process is irrelevant to the requirements of claim 7, which is why Applicant noted, in the Amendment submitted December 12, 2008, Applicant stated, "even if it were well known to modify individual nodes of a workflow model, as taught by Elkin, this would still not disclose or suggest modifying a checked-out node of an enterprise planning model without preventing execution of a corresponding enterprise planning session for the nodes of the enterprise planning model that are not checked-out, as required by ... claim 7."[14]

Because Heinl and Halliday are directed to workflow process models, rather than enterprise planning models as required by claim 7, Heinl and Halliday fail to support the Official Notice that it is well known to modify individual nodes of an enterprise planning model without preventing execution of an enterprise planning session in accordance with the enterprise planning model that are not checked out.

The current Office Action took additional Official Notice, without citing any supporting evidence, that "aggregating the data as the data is received is well known in the art at the time of the invention."[15] MPEP 2144.03 states, "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." Moreover, MPEP 2144.03 states, "It would not be appropriate for the examiner to

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[12] See, e.g., Halliday, p. 1.
[13] See, e.g., Heinl, p. 79, second column; Halliday, Abstract.
[14] Amendment dated December 2, 2008, p. 7.
[15] Office Action dated September 1, 2009, p. 9.

take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must **always** be supported by citation to some reference work recognized as standard in the pertinent art." (emphasis added, citations omitted). The Office Action merely asserted that aggregating data as data is received is well known, which is not capable of instant and unquestionable demonstration as being well-known. If evidence that this subject matter is well known exists, Applicant has a right to inspect and rebut such evidence. The Office Action has not afforded Applicant with that opportunity.

For at least these reasons, claim 7 is patentable over the applied references in view of the Official Notice. The dependent claims, i.e., claims 8–10, 12–13, and 22–23, incorporate the requirements of independent claim 7,[16] and thus are likewise patentable. In light of the gross deficiencies of the applied references with respect to the pending claims, Applicant reserves further comment with respect to the dependent claims at this time, but Applicant does not waive the right to comment further with respect to any pending claim or reference in a future Amendment, Response, or on Appeal.

For at least these reasons, the Office Action has failed to establish a prima facie case for the non-patentability of Applicant's claims 7–10, 12–13, and 22–23 under 35 U.S.C. § 103(a). Applicant therefore respectfully requests withdrawal of this rejection.
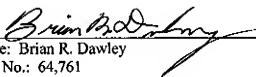
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[16] 35 U.S.C. § 112, ¶ 4.

CONCLUSION

All claims in this application are in condition for allowance. Applicant does not acquiesce as to any assertion in the Office Action with respect to the prior art or to Applicant's claims. Applicant's silence with respect to any assertion in the Office Action should not be interpreted as Applicant's acquiescence thereto. Applicant reserves the right to comment further with respect to the cited art and/or any pending claim in a future Amendment, Response, or on appeal. Applicant respectfully requests reconsideration and prompt allowance of all pending claims.

Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: December 1, 2009

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